IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2612 OF 2005

Aslam Pansare ....Petitioner.
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V/s

1. Grih Finance Limited & Anr. ....Respondents.

Mr. M.S. Kadu for the petitioner.

Mr. M.V. Kini for respondent No.2.

Mrs. M.H. Mhatre, APP for the State.

CORAM: V.M. KANADE, J.

DATE : 4th August, 2006.

P.C:

1. Heard the learned Counsel for the petitioner and the learned Counsel for respondent No.2.

2. Petitioner is challenging the order passed by the Sessions Judge Alibag in Criminal Revision Application No. 85 of 2005 whereby the Sessions Court set aside the order of acquittal which was passed by the learned Magistrate on the ground that the complaint which was filed by respondent No.2 under section 138 was barred by limitation. It was

submitted that the learned Magistrate has passed the said order after the evidence was led and, therefore, the Revisional Court did not have jurisdiction to interfere with the order of acquittal by sending matter back to the Magistrate for de novo trial.

3. The learned Counsel for the respondent No.2, on the other hand, submitted that the learned Magistrate had initially condoned the delay of 15 days in filing the complaint. However, after the delay was condoned, the learned Magistrate again decided the question of delay after the evidence was adduced and, on that ground, acquitted the petitioner. He submitted that, therefore, there was no infirmity in the order passed by the Sessions Court.

4. It is an admitted fact that the learned Magistrate has condoned the delay which was caused in filing the complaint. Once the delay was condoned by the learned Magistrate, it was not open, in my view, to reconsider the question again at the stage of final disposal of the trial. The learned Magistrate, therefore, erred in acquitting the accused on the ground that the complaint was filed after 15 days and was barred by limitation. However, the submission of the learned Counsel appearing on behalf petitioner that the Sessions Court had erred in directing the Magistrate to have de novo trial will have to be accepted.

5. In the result, Petition is partly allowed. The Order of the

Sessions Court directing de novo trial is set aside. Rest of the order of the Sessions Court, however, is upheld. The Magistrate is directed to decide the case on merits on the evidence which is adduced by both the parties in accordance with law . Ad-interim relief granted by this Court stands vacated. Trial is expedited.

6. Petition is accordingly disposed of.

(V.M. KANADE, J.)